



April 2, 2001

Mr. Charles M. Allen, II
Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2001-1286

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145501.

The City of Richardson Police Department (the “department”) received a request for a specified police report. You state that you have released some of the information. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.103, 552.108, and 552.130 of the Government Code as well as title 42, section 405(c)(2)(C)(viii)(I) of the United States Code. We have considered your arguments and reviewed the submitted information.

We first note that you have not complied with section 552.301 of the Government Code in asking for this decision. Subsections 552.301(a) and (b) provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act’s] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.
- (b) The governmental body must ask for the attorney general’s decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You state that you received the instant request for information “[o]n or about 22, 2000.” The request indicates it was made on January 3, 2001. Because you have not adequately demonstrated otherwise, we assume that you received the request for information on the date indicated in the request. *See* Gov’t Code §§ 552.301(e)(1)(C). Therefore, the department

was required to submit its request for a decision to this office by January 18, 2001. However, you did not request a decision from this office until January 23, 2001. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(b) of the Government Code. Because the request for a decision was not timely submitted, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); see Open Records Decision No. 630 (1994). Generally, a compelling reason sufficient to overcome the section 552.302 presumption of openness exists only where the information is confidential by law or its release implicates third party interests. See, e.g., Open Records Decision No. 150 (1977). Section 552.103 is a discretionary exception that does not demonstrate a compelling reason to withhold information from the public.¹ The department also has not demonstrated a compelling reason to withhold the information under section 552.108. See Open Records Decision No. 586 (1991). However, the department's remaining claimed exceptions are designed to protect the interests of a third party and therefore can provide a compelling reason for overcoming the presumption of openness.

Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, you must withhold the Texas driver's license number contained in the requested information under section 552.130.

Furthermore, the requested information contains a social security number that might be confidential and therefore excepted from disclosure under section 552.101 of the Government Code.² A social security number or "related record" may be confidential under

¹Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. See, e.g., Open Records Decision Nos. 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding); 549 at 6 (1990) (governmental body may waive informer's privilege); 522 at 4 (1989) (discretionary exceptions in general).

²Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

the 1990 amendments to the federal Social Security Act, which make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security number in the report is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security number information, you should ensure that the information was not obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, you must withhold the Texas driver's license number contained in the requested report under section 552.130. Furthermore, you must withhold the social security number in the report if it was obtained or is maintained by the department pursuant to a provision of law enacted on or after October 1, 1990. You must release the remainder of the information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

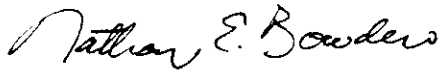
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 145501

Encl: Submitted documents

cc: Farmers Insurance Group of Companies
Dallas Property Branch Claims Office
377 W. Campbell Road
Richardson, Texas 75080-3515
(w/o enclosures)